

# Mortgage Servicer Settlement FAQs

The Servicer Settlement is the product of sixteen months of intensive negotiations between the five largest banks and an unprecedented coalition of state attorneys general and federal agencies, including the Departments of Justice, Treasury, and HUD, that spanned partisan lines.

## Servicer Settlement: Overview

**Q: What is the breakdown in relief that the mortgage servicer settlement actually provides?**

**A:** The settlement will provide approximately \$25 billion on behalf of American homeowners:

- Approximately \$2.6 billion to states which can choose to apply funds to repay public funds lost as a result of servicer misconduct, fund housing counselors, legal aid, and other similar purposes determined by state attorneys generals.
- \$1.5 billion Borrower Payment Fund for borrowers who were foreclosed upon on or after January 1, 2008. Banks must notify those borrowers of their right to file a claim. Payout is anticipated to be approximately \$2,000 per person, depending upon levels of claim and whether they meet some relatively basic criteria. *Borrowers receiving claims will not have to waive any legal rights or claims against the banks, and can seek additional relief.*
- Approximately \$3 billion for refinances for current homeowners who, because their home values are underwater, would not be able to refinance their mortgages into lower interest rate loans.
- \$17 billion in consumer relief options that will offer homeowners a variety of home retention and home disposition alternative, which include:
  - Principal Reduction on 1<sup>st</sup> and 2<sup>nd</sup> lien loans
  - Unemployment forbearance
  - Short sales, cash-for-keys, deficiency waivers and anti-bligh measures.

**Q: How were borrower numbers estimated?**

**A:** For the dollars to be made available to borrowers, it is anticipated that qualifying individuals will receive approximately \$2,000. By dividing the state's hard dollar allocation, which was determined by a calculation developed by the State AGs, by that \$2,000, you can arrive at estimated number of borrowers.

For dollars obligated toward consumer relief options, we allocated the \$17 billion among the participating states by first applying the applicable credit for the consumer relief item (e.g. 10% for deficiency waivers) and then distributing that adjusted amount according to each state's proportion of negative equity on delinquent loans held-for-investment at these servicers. In turn, these amounts were divided by estimated average write down values associated with each menu category to arrive at number of

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borrowers. Because of the requirement for many assumptions, we have stressed that these numbers are only estimates.

For dollars obligated to refinances, we allocated the \$3 billion to the states based on a methodology that first took into consideration the percentage of UPB of HFI loans with rates greater than 6%. In turn, we applied the long term and short term costs of rate reduction to determine the number of short term and long term refinances available per state given its share described above.

**Q: Please describe the process by which you came to the final settlement number?**

**A:** The final settlement number was arrived at as a result of negotiations between the parties. As with any settlement negotiations it was a compromise between an amount that the settling authorities believe they could have received through litigation and the amount that the Servicers believed they would have paid through litigation. We believe that it is a number that fairly compensates the state and federal participants while directing most of the benefits to consumers.

**Q: What set of violations are servicers being released from?**

**A:** The release of claims relinquishes particular state and federal claims on issues addressed by the settlement. These claims at the state level pertain to violations of servicer misconduct, such as robo-signing and other foreclosure misconduct. At the federal level, these claims include failure to abide by FHA servicing requirements and a limited origination claim release.

The release is narrowly tailored and is limited to mortgage servicing and origination claims. States and federal parties that sign on may still pursue other claims against the banks, such as securities and securitization claims. We also retain the ability to pursue financial institutions that are not part of the settlement.

### **Alleged Servicer Misconduct Wrongdoing**

**Q: What legal violations are outlined in the complaint?**

**A:** The complaint outlines servicing violations, origination misconduct, bankruptcy misconduct, and violations of the ServiceMembers Civil Relief Act:

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- Servicing Allegations
  - Unfair, Deceptive and Unlawful Servicing Processes (State claims), such as failing to timely and accurately apply payments made by borrowers and failing to maintain accurate account statements, charging excessive or improper fees for default-related services and failing to maintain appropriate staffing, training, and quality control systems.
  - Unfair, Deceptive and Unlawful Loan Modification and Loss Mitigation Processes (State and Federal claims (including HUD)), including failure to perform proper loan modification underwriting, failure to adequately train staff responsible for loan modifications, wrongfully denying modification applications, failure to respond to borrower inquiries and providing false or misleading information to consumers while referring loans to foreclosure during the loan modification application process.
  - Wrongful Conduct Related to Foreclosures (State and Federal claims (including HUD)), including failure to properly identify the foreclosing party, charging improper fees related to foreclosures, preparing and filing false and misleading documents with courts and government agencies, and preparing, executing, or filing affidavits in foreclosure proceedings without personal knowledge of the assertions in the affidavits and without review of any information or documentation to verify the assertions in such affidavits. This practice of repeated false attestation of information in affidavits is popularly known as “robosigning.”
- Origination Misconduct
  - Unfair and Deceptive Origination Practices (State claims), including practices that caused borrowers to enter into unaffordable mortgage loans that led to increased foreclosures.
  - HUD Claims, including knowing failures to comply with FHA regulations related to establishing quality control programs and other limited origination claims.
- Bankruptcy Misconduct, including making representations to bankruptcy courts that were inaccurate, misleading, false, or for which the Banks, at the time, did not have a reasonable basis to make.
- Violations of the Servicemembers Civil Relief Act (SCRA), including completion of foreclosures on service member-owned properties without compliance with SCRA and charging unlawful interest rates in excess of 6 percent allowed.

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## Structure of Settlement

**Q: How are the refinance, principal reduction, forbearance programs structured? How is the \$25B leveraged to provide deeper principal reduction?**

**A:** Because the banks will receive credit for employing these options at specified credit rates, this \$17 billion has the potential to provide approximately \$32 billion in relief. For example, a deficiency waiver carries a 10% credit, so for every deficiency dollar forgiven by the bank, it would only be credited 10 cents against that bank's obligations under the settlement. Similarly, for principal reduction, modifications of very delinquent 2<sup>nd</sup> lien loans receive less credit than modifications of delinquent first lien loans.

**Q. What tax implications are there for principal reduction? Will it be treated as passive income?**

**A:** Such status hinges on Congress' ability to extend the Mortgage Debt Relief Act which expires in December 2012. If Congress does not extend the bill, homeowners will be taxed for principal reduction/debt forgiveness.

## Payment to homeowners

**Q: Will there be payments to foreclosure victims and when will they be available? Or when can victims of robo-signing expect re-enumeration?**

**A:** Yes. Approximately \$1.5 billion of the settlement funds will be allocated to a compensation fund for borrowers who were foreclosed on after January 1, 2008 and before Dec. 31, 2011. These borrowers will be notified by the servicers of their right to file a claim. Borrowers who were foreclosed upon without being properly offered loss mitigation or with robo-signed paperwork, for instance, will be eligible for a uniform payment, which will be approximately \$2000 per borrower depending on level of response. Borrowers who receive payments will not have to release any claims and will be free to seek additional relief in the courts. Borrowers may also be eligible for a separate restitution process administered by the federal banking regulators.

Proceeds of the settlement are required to be deposited within seven business days after the consent judgment is entered by the federal court, which is anticipated to be within the next couple weeks. Because the State AG offices will coordinate the designation of a settlement administrator which will work with the banks to notify eligible individuals for the process of allocating these funds, it is difficult to specify an exact date, but we anticipate with compensation could start to flow directly to foreclosed homeowners by this summer.

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**Q: Will all individuals foreclosed upon after 1/1/08 be eligible for payments?**

**A:** Borrowers will have to meet and certify to certain criteria, indicating that their foreclosure proceeded without discussion of alternatives or with problems with their paperwork. We anticipate that many of those persons foreclosed upon during that time period will be eligible.

**Q: How will borrowers know whether they are eligible for settlement benefits outside of restitution payment?**

**A:** For borrowers who lost their home to foreclosure between Jan. 1, 2008 and Dec. 31, 2011, a settlement administrator designated by the attorneys general will send claim forms to persons eligible for cash restitution. We anticipate this administrator will coordinate with each of the banks so that they can begin the notification process as soon as possible after the consent judgment is filed.

For loan modifications and refinance options, borrowers may be contacted directly by one of the five participating mortgage servicers. We also anticipate the administrator/monitoring committee that will be keeping watch and ensuring that the banks meet their obligations to work with the banks to ensure they not only notify, but also are equipped to field inquiries.

Moreover, the settlement features a robust set of enforcement mechanisms whereby failure to meet obligations will result in additional fines and reputational risk.

**Q: Are citizens in all states eligible for direct relief?**

**A:** No. Only homeowners in the 49 states who joined the settlement are eligible for benefits under this settlement. Borrowers from Oklahoma will not be eligible for any of the relief directly to homeowners because Oklahoma elected not to join the settlement.

### **Use of Dollars Paid to States**

**Q: How will the dollars paid to states be used? Can those funds be put toward counseling?**

**A:** The consent judgment will strongly encourage states to use the money for housing related purposes, but at the end of the day, each state AG will determine how the funds should be used under state law. This is appropriate because the funds they receive are the result of their release of state claims. In some states there are statutes that direct that some portion of any settlement funds be used for specific purposes, but some states grant broader discretion to the AG's office to make the ultimate determination about how the funds will be utilized.

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## Consumer Relief Requirements

**Q: What are the options that the Banks have to meet their Consumer Relief Requirements?**

**A:** The Consumer Relief Requirements require that 60% of the \$17 Billion in obligations come in the form of principal reduction modifications on 1<sup>st</sup> or 2<sup>nd</sup> lien loans. The remaining 40% of consumer benefits may be in the form of 1) enhanced borrower transition funds over \$1,500 that are paid to borrowers as part of cash-for-keys or deed-in-lieu programs, 2) principal forgiven or second liens extinguished to facilitate short sales, 3) waivers of deficiency balances left after foreclosures, 4) extending forbearance programs beyond 6 months for unemployed homeowners, and 5) engaging in anti-blight activities such as demolition or donation of vacant properties.

## The Refinancing Program

**Q: How does will the refinance program work?**

**A:** Each bank must create a refinancing program for current, underwater borrowers that provides them with the opportunity to take advantage of lower rates. Banks must proactively solicit those borrowers in their portfolio who meet the minimum eligibility criteria. If they need to expand the criteria to meet their obligations then they will reach out to even more borrowers. Every borrower will be offered reduced interest rates for the life of the loan or for at least a 5-year period for loans. The interest rates must be reduced to 100 basis points over the PMMS rate or 5.25%, whichever is greater, during the rate reduction period. The 5-year rate reductions will be allowed to increase 0.5 basis points per year until it returns to the original interest rate.

## Compliance

**Q: How will compliance be measured? Do the servicers have measurable performance benchmarks?**

**A:** The settlement features strong enforcement mechanisms, including a Monitoring Committee comprised of representatives of the state Attorneys General, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development that will receive reports from and provide direction to the Monitor, Joe Smith, previously North Carolina Banking Commissioner. The Monitor will work with the banks to ensure timely and proper outreach as well as measure on-going performance to ensure the banks are meeting their obligations. There are also requirements for servicers to implement internal quality control groups to perform compliance reviews.

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The settlement also incorporates civil penalties whereby the first failure to remedy an uncured breach of metric will incur a \$1mm fine with the potential for up to \$5mm if left uncured.

Moreover, if a Servicer has a widespread problem, the Monitor may order the Servicer to do a full look back and identify any other borrowers who were affected by that problem but not identified in the initial sample, and rectify any harms to those borrowers up to and including refunding of all excess fees.

The settlement will be filed as a Consent Judgment in the United States District Court for the District of Columbia and remain in effect for three-and-a-half years.

**Q: How does this settlement hold the banks accountable?**

**A:** The settlement holds the banks accountable for their servicing violations through substantial financial penalties and extensive consumer relief.

The settlement will require the banks to accomplish a massive undertaking – changing their broken system of servicing loans into one that is functional. The banks will reduce the principal on many of their loans – something that they have resisted for years – to allow homeowners to keep their homes. They will also refinance loans for “underwater” borrowers who have been unable to refinance due to negative equity. They will pay billions of dollars to the states, and, most importantly, commit billions more to consumers.

The banks will be subject to a federal court order enforceable by a federal judge. In addition, a special independent monitor will have the authority to oversee the banks and require their compliance. Federal agencies and state attorneys general can enforce compliance if there are violations.

The agreement holds the banks accountable for their wrongdoing on robo-signing and mortgage servicing. This settlement does not seek to hold them responsible for all their wrongs over the past five years.

The agreement and its release preserve legal options for others to pursue. Governmental entities and private parties are aggressively pursuing securities cases against the banks. A joint federal-state task force has been formed to investigate and prosecute those responsible for the collapse of the mortgage lending and investment markets.

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## HAMP/GSEs

**Q: Will HAMP count towards borrower assistance calculations?**

**A:** There is a mistaken notion that there is a taxpayer subsidy because modifications performed under the Treasury's Home Affordable Modification Program (HAMP) are eligible for credit under the Settlement. In reality there is no such subsidy. Servicers cannot use HAMP incentives to meet their obligations under the settlement, plain and simple.

The settlement does not give any credit for these HAMP modifications that do not include principal reduction. For HAMP modifications that do include principal reduction, servicers only receive credit for the portion of the principal reduction that they themselves pay for, not for the portion covered by incentives in the program. In other words, if a servicer receives a HAMP investor incentive payment of 20 cents for every dollar of principal reduction, it can receive credit at the applicable rate on the remaining 80 cents. However, in no event can the servicer receive more under the settlement than it would have in the absence of HAMP incentives. Thus, there is no "double" credit.

**Q: Is it true that Fannie and Freddie are not participating in the principal reduction and refinancing programs?**

**A:** GSE loans are not eligible for parts of this settlement because of positions their regulator, FHFA, has taken. In addition, to the extent that federal taxpayer funds would serve as the source for any principal reduction paid for by the GSE's, it would not be eligible for credit against the Servicers' obligations. Homeowners with GSE-controlled mortgages who won't directly benefit from settlement-related programs will still see benefits through reduced foreclosures, stabilizing home values and significant new mortgage servicing standards and consumer protections. They can also benefit from HARP 2.0 for refinance and may qualify for principal reduction under revised HAMP guidance.

## Other

**Q: Why don't you sue the banks and try to get even more money?**

**A:** Litigation takes a lot of time and resources and carries risks. While legal cases drag on, homeowners in desperate need of relief are left to watch and wait for an uncertain outcome.



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Millions more homeowners would have likely lost their homes long before the court battles that would be brought by 49 state AG's and the Department of Justice ended. The outcomes of litigation, win or lose, are anything but certain. Even if the cases were successful, it is unlikely that the recovery would exceed \$25 billion and produce the major servicing reforms obtained in this settlement.

**Q: What is the interplay between the settlement and outstanding consent orders from federal regulators, like the OCC and the Fed?**

**A:** There is some overlap with the consent orders covering people who were in some stage of foreclosure during 2009 and 2010. Given this shorter timeframe than the 2008-2011 scope of the servicing settlement, some people who would receive some compensation under the servicing settlement will be considered "out-of-scope" under the consent orders, and not eligible for any other compensation.

However, the regulators have not yet finalized the definitions of financial harm that will be used for the file reviews, nor have they finalized the type or amount of remediation that will be offered to borrowers who have been harmed. Individuals receiving compensation under the servicing settlement still have every right to seek relief under these consent orders, although they may never be truly "fully compensated" for their losses. Going forward, it will be important that borrowers who seek an independent foreclosure review in this manner receive an accurate and efficient answer about whether or not they are considered to have been harmed and eligible for compensation.

**Q: As part of the suite of options established by the settlement, in particular principal reduction, are FHA borrowers and other federal loan guarantee programs eligible to participate?**

**A:** FHA insured loans are not precluded from the suite of options under the settlement, including principal reduction. However, FHA currently has limited authority to engage in principal reduction as part of its partial claim process. Given this limited authority, we are analyzing how to surmount the significant legal and operational hurdles to overcome implementation of a possible principal reduction program. We may ultimately have to request expanded authority through legislation. We continue to evaluate this matter internally and look forward to working with Congress as our evaluation progresses.

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## FHA Settlement with Bank of America & Citibank

**Q: What are the terms of the BoA and Citi separate settlements with the FHA? Were these agreements reached in order to cover a potential shortfall of FHA's MMI Fund? And was this shortfall a result of servicer misconduct? If so, could more have been obtained from the banks?**

**A:** The separate origination settlements with BoA and Citi were designed to compensate the MMI Fund for losses suffered due to failure by those institutions to originate loans in accordance with FHA underwriting requirements. These settlements include payments for the release of origination claims FHA may have against those institutions. The BoA settlement differs in that it only released liability for a portion of claims. Specifically, it covers only loans originated on or before April 30, 2009 and only provides a complete release for those loans that have already been submitted for insurance claims. FHA still has the ability to request indemnification for any loans originated on or before April 30, 2009 that have not yet been submitted for claim. For any loans originated after April 30, 2009, there is no release and FHA can pursue indemnification and any damages.

The timing of these settlements is coincidental to the shortfall of FHA's MMI Fund's Capital Reserve Account and was not coordinated. If it had been coordinated, the White House Budget would not have included a request for funds to resolve the shortfall.

The shortfall itself is as a result of increased claims due to the extraordinary stresses in the housing market, and some of those claims were caused by the banks' material origination errors or failures to properly service the loans. Commensurate with the historic nature of the stresses in the housing market, these funds obtained by FHA in these settlements are historically large as well. The combined \$900mm + in funds for the FHA is more than 9 times larger than the annual amount FHA has ever received in indemnifications.